

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LONG DO and PHUONG DUNG  
HUYNH  
Plaintiffs,**

**v.**

**OCCIDENTAL FIRE & CASUALTY  
COMPANY OF NORTH CAROLINA  
Defendant.**

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**CIVIL ACTION NO. \_\_\_\_\_  
JURY DEMANDED**

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**DEFENDANT OCCIDENTAL FIRE & CASUALTY COMPANY OF  
NORTH CAROLINA’S NOTICE OF REMOVAL**

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TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Occidental Fire & Casualty Company of North Carolina (“Occidental”) files this Notice of Removal from that court to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and respectfully shows:

**I. FACTUAL BACKGROUND**

1.1 On or about December 23, 2019, Plaintiffs filed their Amended Original Petition in the matter styled *Long Do and Phuong Dung Huynh v. IAT Insurance Group, Inc.*, in the 157<sup>th</sup> District Court of Harris County, Texas, in which Plaintiffs made a claim for damages to their home under a homeowner’s insurance policy.

1.2 Plaintiffs served Occidental with process and Plaintiff’s Amended Original Petition on December 23, 2019.

1.3 Plaintiffs’ Amended Original Petition states that “On or about August 25, 2017, a severe wind and/or hail storm...struck Harris County, Texas... This storm

caused substantial damage to buildings in the area, including Plaintiffs' Property." Pl.'s Am. Original Pet. at §8.

1.4 Plaintiffs allege that Occidental improperly adjusted and underpaid their claim. *Id.* at §13. Plaintiffs' Petition seeks damages for breach of contract, violations of the Texas Insurance Code, and violations of the Deceptive Trade Practices Act. *Id.* at §18-46.

1.5 The Index of Matters Being Filed is attached as Exhibit A to this Notice of Removal. A certified copy of the Harris County District Clerk's file for this case is also attached as Exhibit B and includes true and correct copies of all executed process, pleadings, and orders. The Designation of Counsel is attached as Exhibit C.

## **II. BASIS FOR REMOVAL**

2.1 Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332, 1441(a) and 1446.

### **A. Complete diversity exists between Plaintiffs and Occidental.**

2.2 At the time the lawsuit was filed, Plaintiffs were residents of the State of Texas. *See* Pl.'s Am. Original Pet. at §2.

2.3 Defendant Occidental Fire & Casualty Company of North Carolina is incorporated as a North Carolina-domiciled insurance company and has its principal place of business in North Carolina. Accordingly, Occidental is not a citizen of Texas.

2.4 Because Plaintiffs are citizens of Texas and Occidental, a foreign defendant, is the only defendant in this action, there is complete diversity between the parties. As such, removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

**B. The amount of damages prayed for by Plaintiffs exceeds the amount in controversy required to confer diversity jurisdiction on this Court.**

2.5 Federal courts have subject matter jurisdiction over actions between citizens of different states in which the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a)(1); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882 (5th Cir. 2000). Generally, an amount in controversy for the purposes of establishing federal jurisdiction is determined by the Plaintiffs' complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995).

2.6 In their Petition, Plaintiffs seek monetary relief of more than \$100,000. *See* Pl.'s Am. Original Pet. at §4. The face of Plaintiffs' Petition establishes that the amount in controversy exceeds this Court's requirements.

**III. THE REMOVAL IS PROCEDURALLY CORRECT**

3.1 Defendant Occidental was first served with Plaintiffs' Amended Original Petition and process on December 23, 2019. By filing its Notice on this day, January 22, 2020, Defendant Occidental files its Notice of Removal within the thirty-day time period required by 28 U.S.C. §1446(b).

3.2 Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiffs' claims allegedly occurred in this District and Division.

3.3 Pursuant to 28 U.S.C. §1446(d), promptly after Occidental files this Notice, written notice of the filing will be given to Plaintiffs, the adverse party.

3.4 Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the Clerk of the Harris District Court, promptly after Occidental files this Notice.

#### **IV. CONCLUSION**

4.1 Based on the foregoing, the exhibits submitted in support of this Notice, and other documents filed contemporaneously with this Notice and fully incorporated herein, Defendant Occidental Fire & Casualty Company of North Carolina hereby removes this case to this Court for trial and determination.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I, Mikell A. West, certify that on January 22, 2020, a copy of Defendant Occidental Fire & Casualty Company of North Carolina's Notice of Removal was *electronically filed* on the CM/ECF system, and will be served on the following attorneys in charge for Plaintiffs Long Do and Phuong Dung Huynh:

### **VIA CM/RRR: 7018 0360 0000 9115 1282**

Johnny Nguyen

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/s/ Mikell A. West

Mikell A. West